



A Study on Regulations on Mukbang in South Korea and China - Focusing on Legal Properties of Personal Broadcasting in South Korea *

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Abstract: Mukbang' (eating content) originated from a personal broadcasting platform centered on social media and has become a globally popular content. However, social problems soon arose, and China and Korea came to regulate mukbang. Mukbang regulations in China and Korea have differences. China succeeded in regulating based on the power of a strong government for reasons of environmental problems and food security. Despite the government's willingness to regulate mukbang, concerned about the health of the people, Korea failed to regulate it. The purpose of this thesis is to legally investigate why Korea's Mukbang regulation failed unlike China's. In conclusion, freedom of expression based on the Korean constitution was the biggest cause of regulatory failure. In addition, the fact that personal broadcasting has no social responsibility as a general broadcasting acted as a legal logic to prevent government regulation. As an alternative to direct government regulation, the researcher proposes regulated self-regulation led by the private sector.

Keywords: Mukbang, Chibo, Mukbang Regulation, Freedom of Expression, Personal Broadcasting, Regulated Self-Regulation

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1. Introduction

Eating is not only an action of survival, but also an action closely related to culture. In Korea, food culture has been traditionally developed based on healthy eating and etiquettes. However, the development of social media has infused a new aspect into Korea's food culture. Particularly, as the Korean Wave has become a global phenomenon, an increasing number of international social media users have recognized the term mukbang as a specific genre of popular contents related to eating. Major press companies, such as CNN, have paid attention to the mukbang genre as a part of Korea's cultural contents since 2016. Under these circumstances, the Ministry of Health and Welfare (MOHW) warned the negative influence of mukbang on causing binge eating and announced its plans on regulating mukbang and developing relevant guidelines in the Comprehensive Plan on Obesity Management in Korea (National Measures against Obesity hereinafter). Regulations on mukbang have provoked great controversy in that these regulations impose limitations on Korea's representative cultural contents. Consequently, the MOHW's plans on regulating mukbang did not take practical effect after facing strong social opposition and legal issues.

In China, chibo (吃播), which means mukbang in Chinese, gained considerable popularity. However, the Chinese government enacted regulations on chibo twice to ban this eating broadcast related to binge eating.

This study compared the significant aspects of mukbang in Korea and China as well as reasons for regulating this genre in both countries. Furthermore, it reviewed legal properties of mukbang contents of personal broadcasting to evaluate the validity of regulations on mukbang in Korea. The analysis of legal properties of mukbang was conducted because regulations on personal broadcasts are a domain where two major ideas, public nature and freedom of expression, collide with each other. In addition, this study discussed the appropriateness of regulations on mukbang as a means of promoting health pursued by the MOHW by referring to existing studies on regulations on mukbang. Based on the analytic results, it presented the necessity of autonomous regulation of the personal broadcasting industry as an alternative means to regulations on mukbang.

2. Theoretical background

Mukbang, which indicates an eating broadcast, was rooted and spread from online personal broadcast platforms, such as AfreecaTV. On these platforms, each person can act as broadcasting jockeys (BJs) or streamers who create contents and communicate with viewers. Particularly, as BJs' contents on eating food gained growing popularity in 2012, the term mukbang was coined. In the initial stage, mukbang contents tended to show BJs eating food with relish. However, mukbang contents gradually developed into challenging contents on eating quickly, eating a lot, eating spicy food, etc. The latest mukbang contents encompass various themes, such as eating unique international food, observing responses of foreigners to Korean food, and a combination of travel and mukbang, beyond the previous theme of simply eating.

Mukbang received attention as a content format due to the growth of personal broadcasting and a rise in single-person households. The initial development of mukbang began when BJs streamed themselves having a meal alone on personal broadcasting platforms. As viewers who felt a sense of solidarity with these BJs continued to watch their broadcasts, the mukbang genre was solidified as a distinct content format. Statistics Korea reported that single-person households accounted for approximately 30% of the entire households in 2018. Based on the trend of increasing single-person households, it is expected that the demand for mukbang will be also sustained. In fact, there are several Korean streamers with over one million subscribers on Youtube, and the number of these popular streamers is forecasted to increase in the future.

The popularity of mukbang in personal broadcasting has been expanded to mainstream media such as public and cable TV channels. A number of TV channels have introduced entertainment programs based on the mukbang genre, and the term mukbang is frequently shown in public TV programs. Moreover, popular mukbang BJs participated as members of certain public entertainment TV shows.

With the development of Korea's cultural contents, mukbang contents have become popular contents recognized by its proper noun mukbang both in Korea and on global social media platforms. Indeed, foreign Youtube streamers who are not Korean have gained significant popularity by uploading mukbang contents. Meanwhile, a chain restaurant in Sweden has established a studio where customers can record their mukbang videos by themselves.

Global mainstream press companies, such as CNN, have paid attention to mukbang as Korea's cultural content format since 2016. According to CNN, main factors that contribute to the popularity of mukbang include an increase in single-person households, a backlash against the trend of losing weight, and development of communication infrastructure such as the internet and smartphones[1].

3. Research Methodology

The concept and significance of mukbang in China and Korea were grasped. In addition, the difference in the purpose of regulating mukbang in each country was identified. First, the researcher looked at how China implemented mukbang regulation. In Korea, the reason for the failure despite the government's will to regulate was examined through social background and legal reasons. In particular, the freedom of expression in Korea and the reasons for its restrictions were examined first. Second, the researcher investigated the legal nature of Mukbang, which is mainly produced on SNS, and whether SNS broadcasting can be held socially responsible like general broadcasting. Lastly, the researcher explored what alternatives could exist instead of the government's failed direct regulation.

4. Body

4.1 China's Mukbang Regulation 1 - the Anti-food Waste Law of China

Mukbang contents enjoyed great popularity in China for a while until President Xi Jinping (习近平) urged legislation and reinforced supervision to strictly prevent food waste in August, 2020. His statement initiated movement for regulating binge eating on broadcasts. In keeping with this movement, several Chinese local governments carried out the so-called Clean Plate Campaign, which consists of the Chinese words 光 (clean) and 盘 (plate) in its name, with a slogan "Let's clean the plate".

The National People's Congress instantly implemented relevant legislative procedures, and the Clean Plate campaign was spread across China. Online businesses, including TikTok, regulated behaviors of highlighting binge eating and secretly vomiting after eating. Eventually, the Politburo Standing Committee of the National People's Congress passed and instantly enforced the Anti-food Waste Law of China, which severely punishes food waste behaviors, in April, 2021. The Anti-food Waste Law of China comprises 32 articles, some of which state that the authorities concerned can issue correction order to warn press companies or online video service providers which produce, distribute, or promote broadcasts or programs that cause food waste through actions such as binge drinking or binge eating. Particularly, this law specifies that a penalty of up to 17 million won (KRW) is applied to mukbang contents where those who appear in these contents eat and waste food excessively.

According to this law, the authorities concerned can issue correction order to warn press companies or online video service providers which produce, distribute, or promote broadcasts or programs that cause food waste through actions such as binge drinking and binge eating. If the authorities find that a food waste behavior shown in the target contents is severe, they can impose a penalty ranging from 10,000 yuan (approx. 1.71 million won) to 100,000 yuan (approx. 17.13 million won) to the responsible business. Furthermore, the authorities can hold the corresponding company accountable for its actions in accordance with laws by issuing maintenance order or a business suspension to it.

The Anti-food Waste Law of China also forces food service providers and customers to avoid food waste. According to this law, the authorities concerned can apply a penalty of up to 10,000 yuan to restaurants that encourage consumers to order food excessively. Restaurants can also charge processing fees to customers, who are recognized to have wasted food in these businesses, based on a designated fee rate.

As a result, mukbang-related Chinese keywords disappeared on online platforms, including TikTok, where a large amount of contents on mukbang used to be uploaded, and removal of famous mukbang-related accounts is also in progress. Additionally, online platforms have thoroughly controlled contents that promote food waste. Furthermore, the Politburo Standing Committee and the Constitution and Law Committee of the National People's Congress established an exclusive team for managing food waste control tasks to launch a crackdown on mukbang-related contents. It was reported that over 13,600 mukbang-related accounts were removed across China only a month after the regulation of the Chinese authorities on mukbang contents.

4.2 China's Mukbang Regulation 2 - Operational Measures for Anti-food Waste

After formulating the anti-food waste law of China, the Chinese government strengthened the supervision of food waste and banned broadcasting of contents on excessive eating so called mukbang. According to an article reported by Beijing Daily on November 17, 2021, the National Development and Reform Commission

of the People's Republic of China (NDRC) announced operational measures for anti-food waste, which prevent broadcasting companies or online video service providers from producing or distributing contents that promote food waste based on binge drinking and binge eating, on that day. The NDRC stated that it will apply sanctions, such as imposition of a fine and suspension of broadcasting, on companies that do not comply with its correction order or exhibit aspects of excessive food waste and hold these companies accountable for their actions in accordance with laws.

4.3 Background for China's Regulation on Mukbang

An influencer is called wanghong (网红) on Chinese new media platforms. The term wanghong is a newly coined word that combines the words Internet networks and a popular person. Wanghongs have tens of millions to hundreds of millions followers as befitted the large scale of China. For this reason, each wanghong shows enormous power of influence. Wanghongs have created a new distribution style based on development of digital economy and information technology (IT) in China. With the rise of wanghongs, Chinese mukbang contents, which are also known as chibo, enjoyed a surge in popularity. Chinese mukbang videos have a characteristic that streamers who appear in these videos eat a great amount of food. Chinese mukbang videos focused on building the image of streamers as a big eater who can consume food as much as possible. In other words, a big eater is the ideal image for Chinese mukbang streamers. However, the aforementioned characteristic of Chinese mukbang videos triggered relevant issues. For example, streamers secretly spit out food that they ate or left a large amount of food uneaten.

the National People's Congress conducted a field survey based on the entire regions of China and reported that 18 million tons of food were wasted in China's food-related industries and that over 35 million tones of grains were lost in the storage, transportation, and processing processes.

As the food service industry in China has increased, sales in this industry have exponentially soared up. Accordingly,

the amount of food waste has rapidly increased, with 120 million tones of food waste generated in 2019. Particularly, food waste accounts for nearly a half of the entire domestic waste generated in China. Given this situation, the scale of China’s waste caused by discarded food is of great concern.

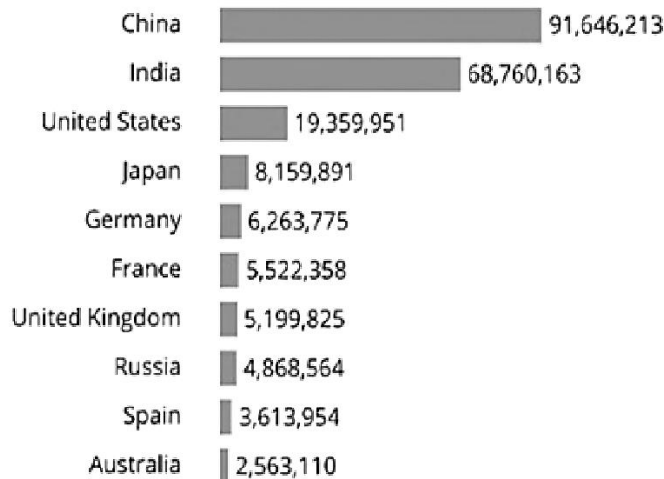


Figure 1. Total food waste per year (tonnes) From UNEP Food Waste Index Report 2021

Moreover, China experienced localized heavy rainfalls from the end of May to the beginning of September in 2020, which caused great damage to its food industry and a delay in food ingredient supply. As a result, Chinese people suffered from a lack of grains and a rise in prices. Regulations of the Chinese government on mukbang contents are stemmed from the issues on waste and food security described above.

Xinhua News Agency commented that the regulations of the Chinese government on mukbang contents are necessary to ensure national food security and that these regulations will contribute to enhancing the social awareness of frugal living that is China’s traditional virtue. In short, issues on food waste and food security were direct causes of China’s regulations on mukbang contents.

4.4 Regulations on Mukbang in Korea

In July 2018, the MOHW announced the National Measures against Obesity in the Policy Review Committee for Promotion of the Public Health, which was established by nine relevant ministries including the MOHW. The National Measures against Obesity were designed to manage obesity at national level from 2018 to 2022 to enhance the public health.

According to the MOHW, the establishment of these measures was based on the prediction of the Organisation for Economic Co-operation and Development (OECD) that the number of severely obese people in Korea will double by 2030. These measures were also rooted from the situation where health issues related to obesity were intensified with the increasing prevalence of complications. According to the MOHW’s press release, social and economic losses caused by obesity increased approx. twice over the past ten years from 48 trillion won in 2006 to 92 trillion won in 2015. Particularly, it was reported that the obesity rate of male children and adolescents was 26% and higher than the OECD average of 25.6%. As such, obesity-related issues in Korea

have been aggravated. The World Health Organization (WHO) has also classified obesity as a disease and listed it as a major cause of cancer.

The goal of the National Measures against Obesity is to maintain the obesity rate (assumed to be 41.5%) in 2022 at the level of the obesity rate (34.8%) in 2016. To this end, the following four strategies were implemented.

1. Educational improvement for establishment of desirable eating habits and encouragement of healthy food consumption
2. Activation of physical activities and formation of health-friendly environment
3. Increase of support for active treatment and obesity management for highly obese people
4. Enhancement of the public awareness and establishment of scientific foundation

However, policies on obesity prevention management for the fourth strategy (enhancement of the public awareness and establishment of scientific foundation) exhibited limitations. Specifically, the National Measures against Obesity include the following statement: “Media that promote binge eating, such as mukbang, are not sufficiently monitored despite concerns over damage that can be caused by such media. In addition, there is a lack of reliable information on the expected damage of media that promote binge eating.” To solve the problems indicated in this statement, the MOHW emphasized the necessity of improving the public awareness of obesity, increasing the supply of information on food, and reinforcing control and regulations on environment that can harm health. Mid- and long-term objectives and strategies of the National Measures against Obesity are as follows. As for the first strategy (educational improvement for establishment of desirable eating habits and encouragement of healthy food consumption), the National Measures against Obesity require establishment of standards for diagnosing binge eating to improve cultural environment that promotes and causes obesity. These measures also emphasize the needs for developing guidelines and a monitoring system for media (e.g., TV programs and online broadcasts) and advertisements that promote binge eating by 2019.

As indicated in these statements, it is clear that the Korean government regards mukbang as media that promotes binge eating as well as contents that it should monitor due to damage that can be caused by these contents. Moreover, the Korean government clearly stated that direct solutions for mukbang-related issues include not only monitoring but also reinforced control and regulations. Although in-depth discussions were not developed, the National Measures against Obesity obviously show the MOHW’s plan for establishing a monitoring system for media that promote binge eating by 2019. It is analyzed that the MOHW expressed its intention to regulate mukbang based on its direct statement of the term mukbang despite insufficient information on specific procedures and methods.

The Korean government was willing to regulate mukbang but failed to implement relevant regulations. Reasons for the abolition of these regulations are as follows.

4.5 Social responses on regulations on mukbang in Korea

After the National Measures against Obesity were announced, numerous people from various fields, such as the personal broadcasting industry, political circles, and press companies, expressed deep concerns on the Korean government’s approach to mukbang contents. Approx. 130 posts on demanding the withdrawal of regulations on mukbang have been uploaded on the online national petition board of the Cheongwadae (Blue House) website since the announcement

of the National Measures against Obesity. The opposing party against regulations on mukbang skeptically views the premise that mukbang promotes binge eating. It argues that the nature of mukbang is not associated with binge eating but with changes of food culture in Korea. Accordingly, it evaluates that people use mukbang contents as a means of reducing their loneliness in recent social circumstances where the number of single-person households increases. In Korea, food has been used as the main media contents. Lee Wook-jeong, a food documentary producer, analyzed this phenomenon as “a proof that we and our society need comfort and consolation and that all of us are facing challengers.” He also assessed that honbap culture, which refers to eating alone, is relevant to the popularity of mukbang and cooking contents. He commented as follows:

”People feel the greatest happiness when they enjoy a meal with their beloved people. However, modern people are getting more distant from this experience over time. We eat alone without friends or family members. While eating, we sit in front of the TV and watch mukbang on the Internet or TV. It is like we have a meal while watching other people eating. This phenomenon is not the target of criticism but a proof that reflects our great loneliness[2].”

As for the expression “media that promote binge eating” indicated in the National Measures against Obesity, Kim Hyeon-sik, a culture critic, evaluated that this expression connotes the subjective view of the Korean government. He also noted that the expression “guidelines” indicated in these measures is likely to cause misunderstanding that the Korean government will regulate the freedom of expression of creators. Additionally, he added that such misunderstanding may occur due to the awareness of the public who still regard the government as the controlling body.

Responses of political circles diverge according to the affiliation of politicians to the ruling party and the opposition parties. Kim Byeong-joon, the head of the Emergency Response Committee of the Liberty Korea Party, criticized that regulations on mukbang assume the public as foolish people and that the governmental actions for regulating mukbang and establishing relevant guidelines result from nationalistic culture[3]. Nam In-soon, a member of the Democratic Party of Korea, refuted the argument of the Liberty Korea Party by stating that previous Korean governments also performed obesity management and that the criticism of those who regard regulations on obesity as a nationalistic approach is consistent to that of those who blame the actions of a country for enhancing the public rights and welfare[4].

The broadcasting industry has shown reservations about regulations on mukbang. The broadcasting industry has not yet received specific information on the National Measures against Obesity from the government or the Korea Communications Commission, and producers have found it too early to prepare solutions for these measures or change existing program plans. Unlike the broadcasting industry, personal broadcasting streamers have voiced their great concerns over the National Measures against Obesity. They have opposed regulations on mukbang by arguing that harmfulness of mukbang has not been verified and that numerous viewers only receive vicarious satisfaction from mukbang contents without binge eating[5]. Indeed, several videos

including opposing messages against regulations on mukbang have been constantly uploaded on Youtube.

After the National Measures against Obesity was announced, most press companies reported regulations on mukbang in full scale and criticized the Korean government for trying to regulate Korea's representative cultural contents that were established naturally. They argued that the Korean government should actively encourage development of mukbang instead of regulating it based on its significant contribution to promoting Korea's cultural contents and food-based travel in Korea. However, some press companies claimed that the expression "regulations on mukbang" was not directly mentioned in the National Measures against Obesity and that certain press companies used this subject to form a political frame and criticize specific political groups in a provocative way[6].

As the National Measures against Obesity were embroiled in great controversy, the MOHW made a statement that it did not intend to regulate mukbang but to figure out the current status of mukbang culture. Accordingly, Jeong Yeong-gi, Manager at the Division of Health Promotion of the MOHW, commented as follows:

"We meant that we will set guidelines on media and advertisements that promote binge eating, not those on mukbang. We are planning to accurately inform the public about issues on binge eating or excessive consumption of high-calorie food and establish a social atmosphere against these issues. Through these processes, we will develop guidelines that support those related to broadcasting to make desirable changes autonomously and independently." However, the National Measures against Obesity include the following text: "Media that promote binge eating, such as mukbang, are not sufficiently monitored despite concerns over damage that can be caused by such media. In addition, there is a lack of reliable information on the expected damage of media that promote binge eating[7]." In this regard, it is analyzed that the MOHW's responses are insufficient for completely easing concerns raised over Korea's policies on mukbang from various fields, including media, in Korea.

4.6 Freedom of Expression in South Korea

Mukbang essentially belongs to personal broadcasting in terms of properties of mukbang contents. The entire contents media, including personal broadcasting, are basically provided with freedom of expression, which is a constitutional right. Thus, every regulation on mukbang is valid only when they ensure freedom of expression and satisfy the principles of evaluation of freedom of expression.

4.6.1 Freedom of Expression

Article 21(1) of Constitution of the Republic of Korea states that all citizens shall enjoy freedom of speech and the press and freedom of assembly and association, all of which are collectively called freedom of expression. Freedom of expression is a basic human right that serves as an essential element for individuals' right of self-determination and realization of their personality[8]. It also constitutes national order under liberal democracy. As democratic society is operated based on free expression and exchange of ideas and opinions, freedom of expression

has a constitutional position that takes precedence over other matters, economic freedom, and other basic rights. In other words, the constitutional position of freedom of expression is protected in that better ideas, which survived from competition with other ideas based on freedom of expression, serve as driving force for social development. The definition of freedom of expression indicated in the First Amendment to the United States Constitution clearly shows the status of freedom of expression that takes precedence over other basic rights. Freedom of expression is mainly classified as freedom of personal expression and freedom of the press that provides media with the right to freedom of expression. Freedom of personal expression is a subjective right that focuses on protecting the individual right of the public to express their opinions without being disturbed. Meanwhile, freedom of the press, which is provided to media including newspaper and broadcasts, has instrumental properties in that it contributes to forming the public opinions. It also aims to establish order for democracy. In this regard, it has broader properties than those of freedom of personal expression[8].

4.6.2. Restriction on Freedom of Expression

Freedom of expression has preferential properties compared to other basic rights. However, its superior status to that of other basic rights is not guaranteed without any restriction. Article 37(2) of the Constitution of the Republic of Korea states that the freedoms and rights of citizens may be restricted by Act only when necessary for national security, the maintenance of law and order or for public welfare. Even when such restriction is imposed, no essential aspect of the freedom or right shall be violated. As indicated in this statement, restrictions defined by Article 37(2) can be formally applied only based on legal statements due to requirements for implementation of these restrictions (statutory reservation). That is, the rights of the public cannot be restricted unless they are restricted by laws legislated by the Congress in terms of constitutional statutory reservation. Particularly, laws on restricting basic rights should be specified clearly enough to inform the public about restrictions that can be applied to them.

Although restriction of rights is legally stipulated, it is only limitedly allowed. Article 37 of the Constitution of the Republic of Korea states as follows: Freedoms and rights of citizens shall not be neglected on the grounds that they are not enumerated in the Constitution. The freedoms and rights of citizens may be restricted by Act only when necessary for national security, the maintenance of law and order or for public welfare. Even when such restriction is imposed, no essential aspect of the freedom or right shall be violated. Therefore, freedom of expression is subject to restrictions for the following purposes like other basic rights[8]:

- a. Guarantee of national security – it refers protection of national safety such as preservation of a country and its land.
- b. Maintenance of order – it refers to a status of keeping order for well-being of the public in a narrow sense.
- c. Public welfare – it refers to common benefits for individuals, which are superior to private benefits for individuals.

However, since freedom of expression is crucial for spiritual freedom, the Korean government should evaluate restrictions on freedom of expression based on constitutional principles more strictly than it does restrictions on other general basic rights.

4.6.3. Principles of Evaluation of Freedom of Expression

Restrictions on freedom of expression are classified as prior restrictions and post restrictions. Prior restrictions refer to censorship, which is unconditionally banned by the Constitution of the Republic of Korea. The Constitutional Court of Korea regards a restriction on freedom of expression as censorship, which is a prior restriction that is unconditionally banned by the Constitution of the Republic of Korea, when this restriction satisfies the following conditions: (1) prior submission of expression materials; (2) evaluation of and determination on expressed contents by an administrative organization; (3) prohibition of an unauthorized expression; and (4) existence of measures for forcing evaluation procedures[9].

Unlike prior restriction, post restriction on freedom of expression can be applied only when the principle of proportionality is satisfied. As for other standards, the vagueness doctrine and the rule of clear and present danger can be considered.

a. The principle of proportionality[8]

Restriction on freedom of expression should satisfy standards for limitations of state action according to the principle of proportionality. First, legitimacy of the purpose must be satisfied. In terms of legislation that restricts the basic rights of the public, the legitimacy of the purpose of such legislation must be recognized within the framework of the Constitution of the Republic of Korea. Appropriateness of means must also be satisfied. In other words, legislative means must facilitate or promote the realization of the legislative purpose. Minimization of damage is the principle that restrictions on fundamental rights must be limited to the minimum necessary level. A restriction on basic rights must minimize damage to the public. When there is any other alternatives that can minimize damage to the public, the corresponding restriction is unconstitutional. The balance of legal benefits means that the public interest that can be obtained from regulation are greater or at least the same as the public interest that can be obtained by basic rights based on the result of comparing the private disadvantages that are caused by regulation on basic rights with the public disadvantages that are caused by neglect of the problematic action. Finally, the principle of prohibiting violation against the essential aspect of the basic rights must be satisfied in terms of aspect-related limitations. Even if restriction on basic rights is highly required, it is impossible to violate the essential aspect of the basic rights which can neutralize the freedom or right. In short, post restriction on freedom of expression can be applied only when the principle of proportionality indicated above is satisfied.

b. The vagueness doctrine

Details of laws that restrict basic rights must be clearly stated. Particularly, the vagueness doctrine is crucial for legislation for regulating freedom of expression because regulation on freedom of expression based on unclear legislation represses expression, which is one of the constitutional values of the highest priority. However, the vagueness doctrine requires only the minimum level of clarity, not the maximum level, and meanings and contents that can be confirmed by supplementary and universal value judgment.

c. The rule of clear and present danger

To apply post restriction on freedom of expression, the target expression must pose clear and present danger. Here, the term clear means that there is an obvious causal relationship between expression and violation of the public interest. Obviousness of such causal relationship is recognized only when it is expected that a certain expressive act will result in clear infringement of the public interest. The term present means that there is temporal proximity between the

expressive act and the infringement of the public interest. In other words, the situation where the public interest can be immediately violated by the expressive act must exist[10].

However, there are dissenting opinions on the application of the rule of clear and present danger as a standard for restricting basic rights in every situation. Some argue that this rule is no more than a standard for determining legitimacy of restriction on freedom of expression in exceptional situations where the marketplace of ideas is not operated, such as a period of the war[8]. Therefore, the principle of proportionality is used as a general standard for determining legitimacy of restriction on freedom of expression in common situations.

4.7 Freedom of broadcasting in South Korea

4.7.1 Legal properties of freedom of broadcasting

Freedom of broadcasting is also a right at the level of basic rights, which is derived from freedom of expression defined in Article 21(1) of the Constitution of the Republic of Korea described above. Freedom of broadcasting has both subjective properties of a right and properties of order of norm that should be systematically guaranteed to establish public opinions. Hence, properties of freedom of broadcasting involve an obligation for defining details of a broadcasting organization and relevant procedures to establish public opinions. For example, Article 69 of the Broadcasting Act states that the broadcast programs must suit the purposes of impartiality, public nature, diversity, balance, truth, etc. and ensure a well-balanced presentation of subject matters of each field, such as politics, economy, society, and culture. To promote freedom of broadcasting, lawmakers may need to force conflicting values, such as public nature, which can influence broadcasting.

Such pressure is legislative intervention in broadcasting. However, it cannot be regarded as violation of freedom of broadcasting all the time in that the order of broadcasting, such as impartiality, public nature, diversity, balance, and truth, is a value that should be pursued to protect freedom of broadcasting. Yet, when the legislative intervention in broadcasting affects the contents or types of broadcasting beyond guarantee of order of broadcasting, it is likely to infringe freedom of broadcasting.

Details of the Broadcasting Act indicate that broadcasting must be free from a nation and that the nation must not exert influence on broadcast programs. Furthermore, the nation must not exert direct or indirect influence on adjustment of broadcasts and standard setting for broadcasting. It must not place the persons engaged in broadcasting under pressure either[11].

4.7.2. Distinct characteristics of Broadcasting and Grounds for Regulation on Broadcasting[11]

Broadcasting is subject to more regulations than other media due to its distinct characteristics. The Basic Law for the Federal Republic of Germany states that broadcasting has the following distinct characteristics, which serve as grounds for regulation on broadcasting. First, according to the theory of technical scarcity, broadcasting frequencies are limited public resources. Frequencies used by broadcasting, especially those can be used for public broadcasts, are

physically limited. Thus, the state can regulate broadcasting to facilitate the appropriate use of these limited resources. Second, according to the theory of economic scarcity, the establishment of a broadcasting company requires a high amount of cost, which causes concerns over the monopoly or oligopoly of a few broadcasting institutions in the industry. The state can regulate broadcasting to ensure objectivity, fairness, and diversity of opinions. Finally, according to the theory of special social influence, broadcasting is a highly appealing medium based on videos and sound including voice. This medium has a significant social impact in that households receive broadcasts with little influence of their intention on such transmission and that broadcasts deliver information as soon as they are transmitted. It is necessary to actively establish social order for the significant social impact of broadcasting, and the state has legislative discretion to manage this order.

4.7.3. Regulation on broadcasting

In the U.S., freedom of expression is pursued above any other value. For this reason, regulation on broadcasting, especially content regulation, is considered censorship and deemed unconstitutional. Unlike the U.S., South Korea regulates broadcasting in a wide range. Yet, regulation on broadcasting in South Korea has properties of post regulation instead of those of prior regulation, which is banned, as described above.

Specifically, broadcast programming is regulated to pursue public nature and the public interest and ultimately reflect the ideas of the Korean government toward broadcasting. Accordingly, a person must obtain a license from the government for operating broadcasting business. With regard to regulation on broadcast programming, Article 69 of the Broadcasting Act states that a broadcasting business entity shall program the broadcast programs to suit the purposes of impartiality, public nature, diversity, balance, truth, etc. and that a broadcasting business entity that engages in general programming shall ensure a well-balanced presentation of subject matters of each field, such as politics, economy, society and culture. In accordance with this article and Article 50 of the Enforcement Decree of the Broadcasting Act, a broadcasting business entity that engages in general programming must arrange broadcast programs as follows: (1) the broadcasting hours of those related to news reports must account for more than 10% of the entire monthly broadcasting hours; (2) the broadcasting hours of those related to culture must account for more than 30% of the entire monthly broadcasting hours; and (3) the broadcasting hours of those related to entertainment must account for less than 50% of the entire monthly broadcasting hours. Furthermore, Article 58 of the Enforcement Decree of the Broadcasting Act states that a terrestrial broadcasting business entity, a terrestrial broadcasting program provider, and a program provider engaging in general programming shall broadcast broadcast content genuinely produced by external producers in excess of the ratio determined and publicly notified by the Korea Communications Commission within 40% of the total half-year TV broadcasting hours of the relevant channel.

In addition, the Korean government directly regulates broadcasting contents. In accordance with Article 33 of the Broadcasting Act, the Korea Communications Standards Commission has

formulated and operated rules concerning the review of broadcasts (hereinafter referred to as Review Regulations). Review Regulations aim to ensure fairness and public nature and include matters concerning protection of minors, public morals, social ethics, etc. the Korea Communications Standards Commission has the authority to impose sanctions, including offering of opinions, recommendations, cautionary measures, and warnings. It can also impose heavy sanctions, such as correction, modification, and suspension or termination of the relevant broadcast program and a disciplinary action against those who are involved in the relevant broadcast program. These post regulations practically amount to content regulation and are likely to conflict with freedom of the press. However, not every content regulation is permissible, and content regulation through legitimate procedures are allowed in South Korea's current broadcasting system. The entire review procedures conducted by the Korea Communications Standards Commission must satisfy the principle of statutory reservation, the principles of evaluation of freedom of expression, and particularly the principle of proportionality, all of which were explained above. If these procedures fail to meet the aforementioned principles, they are likely to be deemed unconstitutional.

4.7.4. Legal properties of personal broadcasting

An analysis of legal properties of personal broadcasting is important in evaluating regulation on mukbang. Broadcasting has distinct characteristics and carries more significant social responsibilities in terms of public nature and public interest than other media. Such social responsibilities serve as grounds for justifying the serious intervention of the state in broadcast programming and content regulation.

According to Article 2 of the Broadcasting Act, the term "broadcasting" means planning, programming or producing broadcast programs, and transmitting them to the general public through telecommunication facilities, referring to any of the following items:

(a) Television broadcasting: Broadcasting which transmits broadcast programs comprised of the instant images of stationary or moving objects, and of the voices, sounds, etc.

(b) Radio broadcasting: Broadcasting which transmits broadcast programs comprised of voices, sounds, etc.

(c) Datacasting: Broadcasting (excluding provision or mediation of such datacasting through communications networks, such as the Internet; hereinafter the same shall apply) which transmits broadcast programs comprised of, mainly, data (referring to the letters, numerals, diagrams, graphs, images, and other information systems), and of the images, voices, sounds and their combinations incidental thereto using the channels of the broadcasting business entities

(d) Digital multimedia broadcasting (DMB): Broadcasting which transmits television broadcasting, radio broadcasting, and datacasting in complexity using multi-channels for the main purpose of receiving while moving

Personal broadcasting refers to broadcasting contents created by individuals on the Internet and is not included in television broadcasting, radio broadcasting, datacasting, and DMB defined

by the Broadcasting Act. That is, personal broadcasting is not considered broadcasting according to the Broadcasting Act. In particular, grounds for regulation on broadcasting do not match with practical conditions of personal broadcasting. First, as personal broadcasting is based on the Internet, it is not related to the scarcity of frequencies according to the theory of technical scarcity. From the perspective of the theory of economic scarcity, personal broadcasting significantly increases accessibility to broadcast production. In this regard, it contributes to resolving the side effects of broadcasting, such as the monopoly or oligopoly of a few broadcasting institutions. However, from the perspective of the theory of special social influence, personal broadcasting may also contain highly significant social influence. Although personal broadcasting is not considered broadcasting according to the Broadcasting Act, the state may use the significant social influence of personal broadcasting as the basis for justifying its regulation on personal broadcasting.

Aside from the Broadcasting Act, the Internet Multimedia Broadcasting Business Act (hereinafter referred to as the IPTV Act) serves as the basis for analyzing legal properties of personal broadcasting. Article 2 of the IPTV Act states that the term "Internet multimedia broadcasting" means broadcasting which provides various content, including data, pictures, voice, sounds and electronic commerce, including real-time broadcast programs, to users through television receivers,

while a two-way Internet protocol ensures consistency in the quality of service, using a broadband integrated services digital network. However, personal broadcasting is unlikely to be considered broadcasting that "ensures consistency in the quality of service" defined by Article 2 of the IPTV Act in that individuals tend to conduct personal broadcasts spontaneously without guaranteeing any broadcasting quality[12].

Kim (2016) argues that personal broadcasting is a broadcast program that is programmed and transmitted or provided by a broadcasting business entity in accordance with the regulations on real-time broadcast programs as defined in Article 2(3) of the IPTV Act[13]. However, personal broadcasting does not fall under the category of Internet multimedia broadcasting business as defined in Article 2(4) of the IPTV Act[12]. According to the IPTV Act, a person who intends to conduct business providing Internet multimedia broadcast service, must obtain permission from the Minister of the Ministry of Science and ICT (MSIT) through legitimate registration procedures. As a result, it is difficult to regard individual streamers as Internet multimedia broadcast service providers or Internet multimedia broadcast content providers. Oh(2016) also contends that personal broadcasting platform providers, such as AfreecaTV, cannot be regarded as companies subject to the IPTV Act since they provide only broadcasting channels and do not have a direct impact on broadcasting content as defined by law, such as the direct effects on broadcast programming[12].

Therefore, personal broadcasting has properties of value-added telecommunications service defined by the Telecommunications Business Act in terms of its legal status. Value-added telecommunications service refers to the provision of value-added services (e.g., database services, voice telephone information services, and information processing services) by renting

telecommunications line equipment from telecommunications business operators. In other words, personal broadcasting has properties of value-added services that use the Internet. The analytic results of the Broadcasting Act and the IPTV Act indicate that personal broadcasting cannot be recognized as broadcasting in the existing media system. Personal broadcasting is not broadcasting but communications from a legal perspective. The absence of its legal status as broadcasting means that it is not subject to social responsibilities for protecting public nature and public interest. Relevant details are described in the following text.

4.8 Significance of Korea's Regulation on Mukbang

As discussed above, broadcasting has a significant one-way impact on the public. Thus, it is stipulated in Article 9 of the Broadcasting Act that broadcasting business entities must obtain permission or approval for their business from the responsible authorities, such as the MSIT and the Korea Communications Commission. The Broadcasting Act emphasizes public responsibility and prioritizes public nature and public interest. Accordingly, it establishes promotion of public welfare as the primary task of broadcasting to protect the rights and benefits of viewers.

However, the analytic results of the Broadcasting Act and the IPTV Act indicate that personal broadcasting cannot be regarded as broadcasting. Furthermore, personal broadcasting mainly provides contents that focus on individual interests or entertainment rather than pursuing general goals, such as promotion of public nature and public interest. The contents of personal broadcasting tend to express private opinions. It is also difficult to request personal broadcasting platform providers to pursue public nature as existing broadcasting providers do. The primary goal of personal broadcasting platform providers is to pursue private interests, and they are not subject to any legal responsibility for pursuing public nature.

According to the National Measures against Obesity, “media that promote binge eating, such as mukbang, are not sufficiently monitored despite concerns over damage that can be caused by such media. In addition, there is a lack of reliable information on the expected damage of media that promote binge eating.” To solve the aforementioned problems, these measures emphasize the necessity of improving the public awareness of obesity, increasing the supply of information on food, and reinforcing control and regulations on environment that can harm health. These measures also require establishment of standards for diagnosing binge eating and stress the needs for developing guidelines and a monitoring system for media (e.g., TV programs and online broadcasts) and advertisements that promote binge eating by 2019. Regardless of the MOHW's explanations, the term mukbang included in the National Measures against Obesity clearly reflects the willingness of the government to regulate mukbang by using specific measures, including development of relevant guidelines and establishment of a monitoring system. The Korean government can regulate broadcasting recognized by the Broadcasting Act based on the distinct characteristics of broadcasting, which must pursue public nature and public interest, grounds for regulation on broadcasting, and the National Measures against Obesity. However, since personal broadcasting has properties as value-added telecommunications service, it follows different goals from those of existing regulation on broadcasting contents. The policy-based goals

of the Internet are based on the principles of participation, openness, and sharing, and the Internet environment demands the minimum regulation. In practice, the Internet is not subject to regulation unless it involves violations of laws which should be judicially judged, such as infringement of the Youth Protection Act and copyright or defamation.

Rather, personal broadcasting is a subject of protection based on freedom of expression defined by the Constitution of the Republic of Korea, which must be prioritized compared to exceptions for restriction on basic rights indicated in Article 37(2) of the Constitution of the Republic of Korea. Freedom of expression is an area that takes precedence over other basic rights, and expression is the essential nature of personal broadcasting. If the state prohibits specific expressions, such restriction is regarded as violation of the essence of personal broadcasting. Here, it should be noted that not every expression is unlimited and that areas that require legal judgments, such as defamation, are exceptions, as mentioned earlier. However, the acts of eating and broadcasting it are not subject to any legal judgment.

With regard to restriction on freedom of expression, Article 37(2) of the Constitution of the Republic of Korea present national security, the maintenance of law and order, or public welfare as reasons for restricting basic rights. Among these reasons, national security is the most powerful reason for restricting basic rights. According to the rule of clear and present danger, the state can regulate freedom of expression at the occurrence of urgent danger. However, this condition does not apply to regulations on mukbang. The state can restrict freedom of expression for the maintenance of law and order but only when there is a specific and practical possibility of existence of danger rather than an abstract and general possibility of existence of danger[14]. Thus, the state can restrict freedom of expression for the maintenance of law and order only when it pertains to a matter that requires legal judgment under existing laws such as the Criminal Act. Finally, the state can restrict basic rights for public welfare. The state must avoid promoting the benefits of the majority by restricting basic rights of individuals if circumstances allow[12]. This argument is based on the idea that freedom of expression, which is preferential basic right, must be prioritized compared to promotion of public welfare. Regulation on mukbang intends to enhance the health of the public for public welfare. However, although health is a significant aspect of public welfare, it cannot be used to restrict freedom of expression, which is a right at the level of basic rights.

Furthermore, the format of regulation on mukbang, which restricts the expression of personal broadcasting, must be consistent with the Constitution of the Republic of Korea. Specifically speaking, regulation on mukbang must fulfill the aforementioned principles of statutory reservation, vagueness doctrine, and proportionality. To regulate mukbang, which belongs to the domain of freedom of expression, legislation by the National Assembly is required (statutory reservation). Changes may occur in the future, but it is currently impossible to implement regulation on mukbang based on only the MOHW's guidelines and establishment of a monitoring system. Although laws on regulating mukbang will be formulated in the future, these laws will be required to clearly indicate specific conditions for restriction.

It is expected that regulation on mukbang will be likely to be deemed unconstitutional according to the principle of proportionality. As regulation on mukbang intends to promote the public health, it can be justified based on the pursuit of public interest. As a legislative means, it must facilitate or encourage the realization of promotion of the public health, which is its legislative goal, to make the appropriateness of means recognized. However, there is no clear evidence for the argument that mukbang causes binge eating and ultimately harms the public health. Unlike the social common notion, Lee et al. (2017), who analyzed the effect of watching mukbang contents on appetite, reported that watching mukbang contents did not always increase the appetite of viewers[15]. Their findings support the argument that the harmfulness of mukbang has not been verified. On the other hand, the result of the survey on the perception of the public toward obesity conducted by the National Health Insurance Service in 2018 showed that 61.2% of the respondents believed that mukbang promotes a sense of hunger or appetite and leads to obesity. In conclusion, a relationship between mukbang and promotion of the public health has not been clearly verified. Therefore, the harmfulness of mukbang is an insufficient ground for restriction on basic rights and needs to be verified clearly. In addition, minimization of damage is the principle that restrictions on fundamental rights must be limited to the minimum necessary level. Regulation on mukbang cannot be evaluated based on this principle at this point, given that specific measures for regulating mukbang have not been derived yet. The balance of legal benefits means that the public interest that can be obtained from regulation are greater or at least the same as the public interest that can be obtained by basic rights. However, as shown in discussions on reasons for restricting basic rights, it is difficult to restrict basic rights for public welfare based on the result of comparing the public interest that can be obtained from mukbang, which belongs to the domain of freedom of expression associated with basic rights, with the public interest that can be obtained from regulation on mukbang for public welfare. Finally, the state cannot prohibit the essential expression of mukbang despite great needs for restricting basic rights since this action is against the principle of prohibiting the violation of the essential aspect of the freedom or right. As such, regulation on mukbang must satisfy the four conditions indicated above to restrict basic rights according to the principle of proportionality. At present, no specific regulations on mukbang have been established. Even if such regulations were to be developed in the future, they would likely face difficulty in restricting freedom of expression for public health and may be deemed unconstitutional due to the potential imbalance of legal benefits.

5. Conclusion - The Necessity of Autonomous Regulation

The comparative results of regulation on mukbang between South Korea and China are as follows.

Table.1 Comparative results on mukbang

Items	South Korea	China
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Main mukbang types	Eating a lot or eating with relish	Eating a lot or eating strangely
Causes of regulation on mukbang	Promotion of the public health	Environmental issues and food security
Methods for implementing regulations on mukbang	Autonomous regulation at the platform level	Legislative regulation at the state level
Obstacles for regulations on mukbang	Social criticism and legal issues	Tricks for avoiding regulation
Effectiveness of regulation	Insufficient effectiveness	Highly effective legislation

Unlike South Korea, China successfully prohibited mukbang contents associated with binge eating through direct legislation. However, some wanhongs circumvented the rules by making animals or rare creatures eat food to perform mukbang.

In South Korea, personal broadcasting is not considered broadcasting based on the Broadcasting Act and the IPTV Act. For this reason, the state cannot directly request personal broadcasting platform providers or personal broadcasting streamers to achieve promotion of public nature and public interest, which is a requirement for broadcasting providers. Since personal broadcasting has properties of value-added communications service from the legal aspect, it is subject to only the minimum regulation irrelevant to regulation based on distinct characteristics of broadcasting. Even the minimum regulation must satisfy the entire principles of restriction on constitutional basic rights, statutory reservation, the vagueness doctrine, and proportionality. The Korean government must thoroughly review the National Measures against Obesity since regulation on mukbang, which is indicated in these measures, is likely to violate freedom of expression.

Therefore, the optimal method for regulating mukbang in a domain related to freedom of expression is not to facilitate autonomous regulation in the personal broadcasting industry, instead of the government's direct regulation, to enable this industry to increase its independent development power. Autonomous regulation has strengths in that it can achieve the goal of regulation on media demanded by society without harming core values.

In other words, the best strategy for regulation on mukbang is to enable the personal broadcasting industry to independently prepare autonomous regulation guidelines and the code of ethics for personal broadcasting through autonomous regulation. Based on this strategy, the personal broadcasting industry can protect freedom of expression and increase its self-purification performance to a certain extent. From this perspective, the Clean Internet Broadcasting Council, which consisted of 19 organizations including governmental bodies, business entities, academic circles, and civic groups (e.g., Naver, AfreecaTV, Google Korea, the MSIT, the Korea Communications Commission, the Korean National Police Agency, and Korea Society of Internet Ethics), was established to encourage social discussions on the policy direction for regulation on online broadcasting. However, as governmental organizations are included in this council,

autonomous regulation performed by the personal broadcasting industry may face the risk of containing properties of government-led regulation instead of those of autonomous regulation. The purpose of autonomous regulation is to resolve the issue of violation of freedom of expression caused by governmental regulation, and councils for facilitating autonomous regulation tend to exclude governmental organizations as their members to encourage business entities to autonomously regulate contents. Indeed, there was a case where the Korean government presented measures for transforming autonomous regulations on game money, which were derived by the Clean Internet Broadcasting Council, into legislative regulation if business entities did not follow these autonomous regulations.

Recently, there has been a new argument that regulated self-regulation should be applied to personal broadcasting on the Internet. Jung Jae-min, a professor at Korea Advanced Institute of Science and Technology (KAIST), proposed the idea of applying regulated self-regulation to personal broadcasting by emphasizing the necessity of developing a method that can protect freedom of expression, guarantee autonomy of business entities, and increase the effectiveness of blocking illegal or harmful information[16]. The concept of regulated self-regulation assumes the following conditions. The government establishes the legal framework and structure autonomous regulation, and a private autonomous regulation organization carries out practical regulation tasks. The government also provides business entities with incentives to encourage their motivation to participate in the private autonomous regulation organization. Foreign business entities are also the subject of joint participation. Professor Jung pointed out that governmental regulation on personal broadcasting is a hasty action that considers only the influence of personal broadcasting. He also commented that the government can cause problems by connecting social responsibilities with governmental regulation. He added that the government should concentrate on the high industrial potential of the personal broadcasting industry.

Regulations on mukbang between South Korea and China may look similar to each other but show significant differences in purposes and methods for implementation. Korea's regulation on mukbang aims to promote the public health, while China's regulation on mukbang intends to solve more practical problems, such as environmental issues and food security. China has implemented regulations on mukbang through relevant legislation, driven by its strong desire to effectively enforce such regulations. On the other hand, South Korea has been unable to implement practical legislative regulation on mukbang due to significant social opposition and legal challenges, as described above. Therefore, reinforcement of autonomous regulation on mukbang is the only alternative solution for practically solving mukbang-related issues in South Korea.

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